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## JAMES BRADLEY THAYER.

James Bradley Thayer, LL.D., Weld Professor of Law at Harvard University, died at his home in Cambridge on the fourteenth day of February, 1902. The severe loss which was sustained by the legal profession in his death has been justly emphasized. By his contributions on the subjects of evidence and constitutional law he rendered a service to the legal profession, the value of which has not been overstated. And yet, it was not in this work, of which Professor Thayer has left a tangible proof, that he was at his best or of the greatest service. Many another has made contributions to the legal learning of the country quite equal to his, and still has not exercised a small part of his influence. It was in the field where he chose to devote the best part of his life, and where he worked so unassumingly, and yet so incessantly, that he appeared at his best and did a work that has rarely been equalled.

The present article is not intended as a biographical sketch. A relation of the facts of Professor Thayer's early life and professional career is not even attempted. It is from the standpoint of the class room, where he labored for over twenty-eight years, and from the standpoint of the students who sat under his instruction, that some description of his work is attempted.

A thorough education in the law to-day requires far more than was thought necessary even a few years ago. The present law course and the present lawyer must be thoroughly well rounded. There are times, both in study and practice, when the hampering influence of decided cases should be cast aside, and a question approached entirely from the standpoint of principle. There are also times, both in study and practice, when principles, however logical, must be abandoned and the fact freely recognized that the binding force of previous decisions has forever closed debate. Instruction from both standpoints is necessary. Professor Thayer systematically taught that a deci-

sion, once rendered, must be accepted, but he was pre-eminent among the educators of this country as a careful analyzer of the actual force of judicial opinions.

It was the good fortune of the writer to sit under Professor Thayer's instruction throughout every course which he was giving at the Harvard Law School not many years ago. The repetition of a single question, which at the time seemed hopelessly tedious, will never be forgotten. Scarcely a case was stated for months but what the first question asked was: "How did that case come up?" He drilled into the minds of the students, as perhaps no other instructor has ever done, the absolute necessity of examining a case, not from the point of what was *said* by the judge, but from the point of exactly what questions really were presented for legal decision. The precise points presented by the manner of an appeal were invariably determined before the opinion of the court was at all considered. *Dicta*, however interesting as legal discussion, were carefully sifted out and plainly labelled. The importance of such a treatment of authorities was so emphasized that it could not be forgotten, and the good effects of that lesson, so well taught, will be appreciated by the students who sat under Professor Thayer, so long as their practice of the law continues.

In his method of instruction, Professor Thayer was never showy. Chief Justice Holmes of Massachusetts, in a private letter, quoted here by permission, has accurately voiced this characteristic of his work: "He was an example of what we need to see exemplified as often as may be, unadvertised, quiet production of the first rate, as against pose, advertisement and easy success." Probably no one has ever attended Professor Thayer's lectures who appreciated, at the outset, the full value of the opportunity. His courses were among the hardest which the school offered, and he made no effort to minimize the amount of work which was required of the student. The lectures on sales, on evidence, and on constitutional law contained so much substantive law as to be, at times, almost confusing, and few, if any, realized the compactness of the instruction or the breadth of the ground actually covered until a course had been completed and reviewed. It was only after a man

was almost ready to leave the school that he realized the debt which he owed to Professor Thayer, but it is confidently asserted that no man ever has left the Harvard Law School without feeling towards him a deep sense of gratitude.

It is usually assumed in the law that a man, even of pre-eminent ability, must close his career upon the bench, if he is to perpetuate his name. It must be admitted that a lawyer who has not done this can leave no conspicuous and tangible proof of his learning. But if a man's work is more important than the world's knowledge of that work, and if a man's life is more important than an emblazoned monument after his death, then it is true that Professor Thayer did a work and lived a life which achieved the best results, and will have an enduring influence. It always seems an irremediable loss when the death occurs of any man who, through many years of painstaking study, has made himself an authority in his profession. The death of Professor Thayer is such a loss, but the influence of his learning has not ceased because his active work is finished. More important than the existence of innumerable printed decisions is the service which he has rendered to thousands of men who are to-day practicing the law throughout all the States of this country. While these men live his influence will be felt, and through their instruction of others his influence will be perpetuated.

CHARLES SHERMAN HAIGHT.